

EX-107 OR LATE FILED

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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Room 222 - 1919 M Street, N.W.
Washington, D.C. 20554

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AUG 31 1998

Re: *Ex Parte* - CC Docket No. 96-115

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

In a letter to the Commission dated May 20, 1998, the Association of Directory Publishers ("ADP") states that it "brings to the Commission's attention" certain materials regarding the rates BellSouth charges for subscriber list information. In an apparent attempt to obfuscate the issues, however, the letter provides an incomplete account of the facts regarding these materials and the rates for the services.

BellSouth provides Directory Publishers Database Service ("DPDS") (referred to as subscriber list information, "SLI", in the ADP letter) for customers who wish to purchase such services for the purpose of publishing a directory. The customer can purchase the initial service, which is a listing of all subscribers in the central office, by NPA-NXX. Additionally, at its option, the customer can purchase updates to the initial service in a variety of ways including a Weekly Business Activity Report ("WBAR")¹, daily updates, sort extracts, and new connect reports. The charges for the initial service and any updates are market based, which is appropriate considering the value of the information being provided. Moreover, DPDS is a non-basic service over which BellSouth does not control a "bottleneck" function. Indeed, any member of the ADP, independent of BellSouth, could obtain this information.

When setting the price for any service, the provider must be assured that the price exceeds the incremental cost to provide the service. Accordingly, a cost study is warranted to achieve this goal. Contrary to ADP's belief, this does not mean that the service must be priced at that cost. BellSouth is entitled to make a profit on this service. It is merely charging a price set by the market. In fact, members of the ADP use this service to sell yellow pages advertising for their directories. Thus, the information has a value to ADP's members well beyond BellSouth's incremental costs. BellSouth should not be forced to provide the DPDS service only at a price that excludes any contribution to overhead costs, much less an economic profit, while the ADP

¹ A WBAR is a listing all disconnections, changes, transfers, and new business connections that occurred in the central office for the week.

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members could use the service to obtain economic profits. Moreover, BST provides the same information to BellSouth Advertising & Publishing Company ("BAPCO"), the entity that publishes BellSouth's directories. BAPCO purchases this service at a price that exceeds the price BST charges other entities. Thus, BellSouth does not place competing directory publishers at a competitive disadvantage.

In its letter, ADP relies on a cost report filed with the Florida Public Service Commission during the application and review of BellSouth's tariff for DPDS in Florida, and a report issued by the commission staff of the Louisiana Public Service Commission ("LPSC"), to contend that the Commission should force BellSouth to charge customers only the incremental costs it incurs to provide DPDS. The letter cites selected portions of these documents and then makes the specious conclusion that "the Commission must issue rules stating that SLI prices must be cost based." These documents, however, provide only part of the story regarding the proceedings in which these items were filed. ADP has conveniently omitted significant facts that place these issues in proper focus.

For example, in the Florida proceeding in which BellSouth filed the cost study, the FPSC approved BellSouth's rates established in its tariff for DPDS services. Indeed, in an order issued on May 9, 1997 regarding DPDS rates for new connection reports and update services,² the FPSC stated that:

We do not agree with FIDP [Florida Independent Directory Publishers] that incremental cost pricing is appropriate for the requested services. These are non-basic services. Price protection is not necessary for them, as it is for basic services. Also, we find that BellSouth's services do not constitute a bottleneck function for FIDP, since other sources exist for the required information. Furthermore we find that incremental pricing is not consistent with the market value of new connections information. ... We find that BellSouth's proposed market based rates are reasonable for the service offerings requested by FIDP.³

The FPSC went on to address 47 U.S.C. § 222(e) and stated that the section requires "BellSouth to provide subscriber list information to any directory publisher upon request for the purpose of publishing directories. Accordingly, we find that our decisions herein concerning

² ADP makes a specific complaint regarding the prices for new connection services in Section B of its letter. BellSouth notes that even though it has gone to the trouble to offer new connection services to ADP members, there has been very little demand for such services. Accordingly, ADP's complaint seems disingenuous considering that very few, if any, of its members appear to be taking advantage of this service.

³ In Re: Petition and complaint of Florida Independent Directory Publishers to amend Directory Publishers Database Service Tariff of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone Company, Docket No. 931138-TL, Order No. PSC-97-0535-FOF-TL, May 9, 1997, at 6.

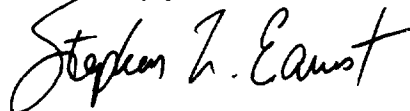
new connections listings comply with 47 U.S.C. § 222(e)."⁴ Thus, while ADP may prefer that the services should be priced at cost, this view is not shared by the FPSC.

The pending Louisiana docket referred to by ADP concerns BST's efforts to introduce a tariffed update product for the independent directory publishers. In its letter to the Commission, ADP has quoted statements by the LPSC Staff (which consists of one LPSC attorney in that case) in its pre-hearing brief. The Staff, however, did not have the benefit of the hearing when it filed those comments. Moreover, the Staff will soon be filing a post-hearing brief. Aside from the further opportunity for the LPSC staff to comment, this matter is assigned to an administrative law judge, who will issue a final recommendation to the LPSC after her review of the post-hearing briefs. Only after that process is complete will the LPSC render a decision in this matter. In short, to the extent ADP's reference to the initial staff comments is meant to imply that the matter is resolved in Louisiana and that the LPSC agrees with ADP, that implication is misleading. This matter will not be resolved fully by the LPSC until, at the earliest, September or October.

Finally, the letter charges that "BellSouth discriminates in the pricing of its Weekly Business Activity Report (WBAR)" in the states where BellSouth sells DPDS services under tariff versus those states where the services are not under tariff. This simply is not true. ADP is trying to compare apples with oranges in the prices it quotes in its letter. As discussed earlier the WBAR is a listing of activity (disconnecting, changes, transfers, and new connections) that occurs in a central office (NPA-NXX) during a week. In states in which BellSouth has a tariff for DPDS services, the tariffed charges for the WBAR are \$.006 per listing, for all listings in the NPA-NXX, i.e., up to 10,000 listings. In states where DPDS is not tariffed, the charges for the WBAR are \$.09 per item of activity that occurred during the week. In most cases the total cost for the WBAR is the same, or comparable, even though the pricing methodology differs. Thus, BellSouth does not discriminate among any customer for the price it charges for the WBAR.

The ADP's letter singling out BellSouth is puzzling in that BellSouth follows the same practices as the rest of the industry in pricing its DPDS services. This practice is not only followed by the rest of the industry, but, as stated above, has been approved by the FPSC. The Commission should follow the FPSC's lead, which has had the benefit of public hearings on this matter, and dismiss the ADP's letter for the self-serving anomaly that it is.

Sincerely yours,



Stephen L. Earnest
Attorney for BellSouth

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⁴ *Id.* at 6.